

SENATE BILL 574

Q6

2lr1502
CF 2lr1499

By: **Chair, Anne Arundel County Senators**
Introduced and read first time: February 3, 2012
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation Tax – Public Utilities – Indemnity Mortgages**

3 FOR the purpose of providing that, except under certain circumstances, secured debt
4 with respect to certain instruments of writing that secure a guarantee of
5 repayment of a loan is deemed for purposes of the recordation tax to be incurred
6 when and to the same extent as debt is incurred on the guaranteed loan and the
7 recordation tax applies with respect to certain instruments of writing in a
8 certain manner; defining certain terms; and generally relating to the treatment
9 of certain indemnity mortgages on certain public utility property under the
10 recordation tax.

11 BY repealing and reenacting, with amendments,
12 Article – Tax – Property
13 Section 12–105(f)
14 Annotated Code of Maryland
15 (2007 Replacement Volume and 2011 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Tax – Property**

19 12–105.

20 (f) (1) Except as provided in paragraph (4) of this subsection, if the total
21 amount of secured debt has not been incurred at the time of recording or filing the
22 instrument of writing, the recordation tax applies only to the principal amount of the
23 debt incurred at that time.

24 (2) Except as provided in paragraphs (3), (4), and (6) of this
25 subsection, on or before 7 days after any additional debt is incurred after recording or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 filing an instrument of writing, a statement under oath of the amount of additional
2 debt shall be filed with the clerk of the circuit court or with the Department, and the
3 recordation tax shall be paid on the additional debt by the debtor.

4 (3) If the additional debt under paragraph (2) of this subsection is
5 applied to repayment of the debt previously incurred, the recordation tax does not
6 apply to the additional debt.

7 (4) The recordation tax may be computed and paid on the maximum
8 outstanding principal sum, however expressed, that is stated to be secured by the
9 instrument of writing, without regard to the amount of secured debt actually incurred,
10 advanced, or readvanced.

11 (5) When credit is originally extended under paragraph (1) of this
12 subsection to a consumer borrower, as defined in § 12-901 of the Commercial Law
13 Article, the lender shall inform the borrower that:

14 (i) the borrower may pay the recordation tax under paragraphs
15 (1) and (2) or paragraph (4) of this subsection; and

16 (ii) if the borrower elects to pay the recordation tax as
17 additional debt is incurred under paragraph (2) of this subsection, the consumer
18 borrower is responsible for payment of the additional tax and any penalty provided by
19 § 14-1012 of this article.

20 (6) (i) This paragraph applies to construction loans for over
21 \$100,000 for which the total amount of secured debt has not been incurred at the time
22 of recording or filing the instrument of writing.

23 (ii) At the time that additional debt is incurred, the lender shall
24 issue a draft payable to the appropriate collector of the recordation tax in the amount
25 of the recordation tax due under this subsection.

26 (iii) The funds for the draft may be proceeds from the additional
27 debt that is incurred or from the borrower.

28 (iv) Until the recordation tax is paid as required under
29 paragraph (2) of this subsection, the borrower shall remain liable for the recordation
30 tax that is due on the additional debt.

31 **(7) (I) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS**
32 **HAVE THE MEANINGS INDICATED.**

33 **2. "ELECTRIC COMPANY" HAS THE MEANING STATED**
34 **IN § 1-101 OF THE PUBLIC UTILITIES ARTICLE.**

1 **3. “ELECTRIC PLANT” HAS THE MEANING STATED IN**
2 **§ 1–101 OF THE PUBLIC UTILITIES ARTICLE.**

3 **4. “GAS COMPANY” HAS THE MEANING STATED IN §**
4 **1–101 OF THE PUBLIC UTILITIES ARTICLE.**

5 **5. “GAS PLANT” HAS THE MEANING STATED IN**
6 **§ 1–101 OF THE PUBLIC UTILITIES ARTICLE.**

7 **6. “INDEMNITY MORTGAGE” INCLUDES ANY**
8 **MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST IN REAL**
9 **PROPERTY THAT SECURES A GUARANTEE OF REPAYMENT OF A LOAN FOR**
10 **WHICH THE GUARANTOR IS NOT PRIMARILY LIABLE.**

11 **(II) THIS PARAGRAPH APPLIES ONLY TO AN INDEMNITY**
12 **MORTGAGE ON AN ELECTRIC PLANT OF AN ELECTRIC COMPANY OR A GAS PLANT**
13 **OF A GAS COMPANY.**

14 **(III) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS**
15 **PARAGRAPH:**

16 **1. SECURED DEBT WITH RESPECT TO AN INDEMNITY**
17 **MORTGAGE IS DEEMED TO BE INCURRED FOR PURPOSES OF THIS SUBSECTION**
18 **WHEN AND TO THE SAME EXTENT AS DEBT IS INCURRED ON THE GUARANTEED**
19 **LOAN; AND**

20 **2. THE RECORDATION TAX APPLIES UNDER THIS**
21 **SUBSECTION IN THE SAME MANNER AS IF THE GUARANTOR WERE PRIMARILY**
22 **LIABLE FOR THE GUARANTEED LOAN.**

23 **(IV) THIS PARAGRAPH DOES NOT APPLY TO THE EXTENT**
24 **THAT RECORDATION TAX IS PAID ON ANOTHER INSTRUMENT OF WRITING THAT**
25 **SECURES PAYMENT OF THE GUARANTEED LOAN.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 July 1, 2012.